

THE HONORABLE BENJAMIN SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CLYDE RAY SPENCER , MATTHEW RAY
SPENCER, and KATHRYN E. TETZ,

Plaintiffs,

v.

FORMER DEPUTY PROSECUTING
ATTORNEY FOR CLARK COUNTY
JAMES M. PETERS, DETECTIVE
SHARON KRAUSE, SERGEANT
MICHAEL DAVIDSON, CLARK COUNTY
PROSECUTOR'S OFFICE, CLARK
COUNTY SHERIFF'S OFFICE, THE
COUNTY OF CLARK and JOHN DOES
ONE THROUGH TEN,

Defendants.

NO. C11 5424 BHS

DEFENDANTS' REPLY TO
RESPONSE TO MOTION TO
STRIKE PLAINTIFFS'
SUPPLEMENTAL DISCLOSURE
PURSUANT TO FED.R.CIV.P.
26(a)(1) AND TO BAR
TESTIMONY

NOTE ON MOTION CALENDAR:
Friday, December 7, 2012

1. Plaintiff has failed to justify the delay in disclosure.

Plaintiff's Response to Defendants' Motion to Strike Plaintiff's Supplemental Disclosure Pursuant to Fed.R.Civ.P. 26(a)(1) and to Bar Testimony ("Plaintiff's Response") does not provide any legitimate explanation or justification for waiting until less than one month before the discovery cut-off date to supplement his initial disclosures. Plaintiff argues that his counsel had to wait until the first seven depositions were taken (of the three individually named defendants, the three originally named plaintiffs, and Ray Spencer's former spouse, DeAnne Spencer) and then "...

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AND TO BAR TESTIMONY - 1

Cause No: C11-5424 BHS

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1 continue to form a litigation strategy . . .” before realizing the need to disclose these
 2 additional witnesses. Plaintiff’s Response, p. 3, lns. 13-14. However, there is no
 3 explanation provided about the specific facts supposedly discovered in any of those
 4 depositions which allegedly led to this realization. Rather, plaintiff claims only that the
 5 depositions resulted in “ . . . the discovery of important information” Plaintiff’s
 6 Response, p. 2, lns. 20-21. Nor is there any attempt made to explain why plaintiff did
 7 not produce the records Bates No. Spencer005933-005958, in which many of these
 8 additional witnesses were identified, with his original request for production responses.
 9 Also, plaintiff does not dispute that he and his counsel have known about these
 10 witnesses since well before service of his initial disclosures.

11 Plaintiff’s supplementation of his initial disclosures under these circumstances
 12 was not done “in a timely manner” as required by Fed.R.Civ.P. 26(e)(1)(A), and the
 13 challenged additional witnesses should be barred from testifying.

14 **2. Defendants have been prejudiced by the untimely disclosure.**

15 Plaintiff’s belated supplementation of his initial disclosures was served less than
 16 one month before the discovery cut-off date, with the Thanksgiving holiday intervening.
 17 The heavy deposition schedule in this case has continued, with seven more depositions
 18 either already completed or scheduled to be completed since the first seven, and three
 19 others having been scheduled by the plaintiffs but then canceled. Very little time has
 20 been available to defendants to investigate and evaluate the information and
 21 documentation belatedly provided, let alone to try to fit additional depositions into the
 22 schedule. Defendants should not be put in this position of disadvantage, and plaintiff
 23 allowed to benefit, by plaintiff’s belated disclosure.

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1 For the foregoing reasons and those set forth in the Motion, defendants request that
2 the court enter an Order striking Plaintiffs' Supplemental Disclosure Pursuant to Fed. R.
3 Civ. P. 26(a)(1), and barring the testimony of all of the challenged witnesses disclosed
4 therein.¹

5 DATED this 7th day of December, 2012.

6 /s/ Guy Bogdanovich

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26 ¹ Witnesses 7-9 in the Supplemental Disclosure, Darla R. Schlegel, Lynda Harper and Karen Stone Mignogna, are excluded from this Motion to Strike and the proposed Order.